

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL OF)
THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT, in)
his capacity as the TRUSTEE FOR)
NATURAL RESOURCES FOR THE)
STATE OF OKLAHOMA,)
)
Plaintiff,)
v.)
)
TYSON FOODS, INC., et al.,)
)
Defendants,)
)
TYSON FOODS, INC., et al.,)
)
Third-Party Plaintiffs,)
)
v.)
)
CITY OF TAHLEQUAH, et al.,)
)
Third-Party Defendants.)

Case No. 4:05-CV-00329-TCK-SAJ
The Honorable Terence Kern

**ANSWER OF THIRD-PARTY DEFENDANT
NORTHLAND FARMS, LLC TO THIRD-PARTY COMPLAINT**

Third-Party Defendant, Northland Farms, LLC (“Northland Farms”), hereby answers Third-Party Plaintiff’s Third-Party Complaint filed on October 4, 2005. Headings and paragraph numbering below correspond to those in the Third-Party Complaint.

I. BACKGROUND

1. With respect to paragraph 1 of the Third-Party Complaint, to the extent any allegations are directed to Northland Farms, they are denied.

2. With respect to paragraph 2 of the Third-Party Complaint, to the extent any allegations are directed to Northland Farms, they are denied.

3. With respect to paragraph 3 of the Third-Party Complaint, to the extent any allegations are directed to Northland Farms, they are denied.

4. With respect to paragraph 4 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

5. With respect to paragraph 5 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

6. With respect to paragraph 6 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

7. With respect to paragraph 7 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

8. With respect to paragraph 8 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

9. With respect to paragraph 9 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

II. PARTIES

10. With respect to paragraph 10 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

11. With respect to paragraph 11 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

12. With respect to paragraph 12 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

13. With respect to paragraph 13 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

14. With respect to paragraph 14 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

15. With respect to paragraph 15 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

16. With respect to paragraph 16 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

17. With respect to paragraph 17 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

18. With respect to paragraph 18 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

III. THIRD-PARTY DEFENDANTS

19. With respect to paragraph 19 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

20. With respect to paragraph 20 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

21. With respect to paragraph 21 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

22. With respect to paragraph 22 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

23. With respect to paragraph 23 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

24. With respect to paragraph 24 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

25. With respect to paragraph 25 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

26. With respect to paragraph 26 of the Third-Party Complaint, Northland Farms admits that it is a limited liability corporation. It operates a commercial nursery business in Cherokee County, Oklahoma. It uses slow-release fertilizer, and some pesticides and herbicides in the conduct of its business. Northland Farms cannot say with certainty that phosphorous and other constituents directly attributable to Northland Farms operations are released into the IRW. Northland denies the balance of paragraph 26 of the Third-Party Complaint.

27. With respect to paragraph 27 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

28. With respect to paragraph 28 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

29. With respect to paragraph 29 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

30. With respect to paragraph 30 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

31. With respect to paragraph 31 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

32. With respect to paragraph 32 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

33. With respect to paragraph 33 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

34. With respect to paragraph 34 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

35. With respect to paragraph 35 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

36. With respect to paragraph 36 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

37. With respect to paragraph 37 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

38. With respect to paragraph 38 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

39. With respect to paragraph 39 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

40. With respect to paragraph 40 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

41. With respect to paragraph 41 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

42. With respect to paragraph 42 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

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44. With respect to paragraph 44 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

45. With respect to paragraph 45 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

46. With respect to paragraph 46 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

47. With respect to paragraph 47 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

48. With respect to paragraph 48 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

49. With respect to paragraph 49 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

50. With respect to paragraph 50 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

51. With respect to paragraph 51 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

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130. With respect to paragraph 130 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

131. With respect to paragraph 131 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

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148. With respect to paragraph 148 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

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156. With respect to paragraph 156 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

157. With respect to paragraph 157 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

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169. With respect to paragraph 169 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

170. With respect to paragraph 170 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

IV. JURISDICTION AND VENUE

171. With respect to paragraph 171 of the Third-Party Complaint, Northland Farms denies that this Court has proper subject matter jurisdiction. The remaining allegations of this paragraph are denied to the extent that they require a response.

172. Denied.

173. Denied.

V. STATEMENTS OF FACT

A. The Underlying Lawsuit

174. Admitted.

175. Paragraph 175 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

176. Paragraph 176 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

177. Paragraph 177 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

178. Paragraph 178 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

179. Paragraph 179 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

180. Paragraph 180 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

181. Paragraph 181 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

182. Paragraph 182 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

183. Paragraph 183 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

184. Paragraph 184 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

185. Paragraph 185 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

186. Paragraph 186 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

187. Paragraph 187 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

188. Paragraph 188 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

189. Paragraph 189 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

190. Paragraph 190 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

191. Paragraph 191 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

192. Paragraph 192 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

193. Paragraph 193 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

194. Paragraph 194 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

195. Paragraph 195 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

B. General Allegations Regarding Third-Party Defendants

196. Northland Farms incorporates its responses to paragraphs 1 through 195 as though fully set forth herein.

197. Paragraph 197 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

198. With respect to paragraph 198 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

199. With respect to paragraph 199 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

200. With respect to paragraph 200 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied. With respect to balance of the

allegations of paragraph 200 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

201. With respect to paragraph 201 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied. With respect to balance of the allegations of paragraph 201 of the Third-Party Complaint, Northland Farms is without sufficient knowledge or information at this time to admit or deny the allegations, and therefore denies the allegations.

202. Paragraph 202 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

203. With respect to paragraph 203 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

204. Paragraph 204 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

205. With respect to paragraph 205 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

206. With respect to paragraph 206 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

207. With respect to paragraph 207 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

208. With respect to paragraph 208 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

209. With respect to paragraph 209 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

210. With respect to paragraph 210 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

211. With respect to paragraph 211 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

212. Paragraph 212 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

213. Paragraph 213 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

214. Paragraph 214 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

215. With respect to paragraph 215 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

216. With respect to paragraph 216 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

217. With respect to paragraph 217 of the Third-Party Complaint, Northland Farms admits that it received a letter from the Third-Party Plaintiffs, but is without sufficient knowledge or information at this time to admit or deny the allegations of the balance of this paragraph, and therefore denies the allegations.

218. Paragraph 218 of the Third-Party Complaint does not require a response from Northland Farms but, to the extent any response is required, it is denied.

219. With respect to paragraph 219 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

220. With respect to paragraph 220 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

221. With respect to paragraph 221 of the Third-Party Complaint, to the extent the allegations are directed to Northland Farms, they are denied.

WHEREFORE, Third-Party Defendant Northland Farms, LLC requests that judgment be granted in its favor and against the Third-Party Plaintiffs, and that it be awarded its costs and attorney fees, and such other relief as the Court deems proper.

AFFIRMATIVE DEFENSES

1. The Third-Party Complaint fails to state claims upon which relief can be granted.
2. Third Party Plaintiffs' Complaint should be dismissed for failure to join one or more indispensable parties.
3. Third Party Plaintiffs' claims are barred to the extent they rely on the retroactive application of any statute, regulation or standard of conduct.
4. Third Party Plaintiffs' claims are barred to the extent they are predicated upon conditions located on private lands, within privately owned waters, on federal lands or any condition located within Indian Country.
5. The Third Party Complaint should be dismissed due to Third Party Plaintiffs' failure to identify and describe any specific lands they assert is a "facility" within the meaning of CERCLA.

6. Third Party Plaintiffs' knowledge of the alleged conditions in the IRW has continued for such a period of time as to eliminate the existence of any "imminent and substantial endangerment" as a matter of law.

7. Third Party Plaintiffs' Complaint should be dismissed due to the inadequacy of notice under 42 U.S.C. §6901 *et. seq.* and 42 U.S.C. § 9601 *et.seq.*

8. Third Party Plaintiffs' Complaint should be dismissed due to the inability to prove that any natural resource damage was caused by any release or discharge of a hazardous substance for which Northland Farms could be held liable.

9. The Third Party Complaint should be dismissed, in whole or in part, due to the inability to prove the existence of a release, threatened release, or natural resource damage resulting from each and every one of the constituents about which they complain.

10. The Third Party Complaint should be dismissed due to the inability to prove that the release of an alleged hazardous substance of Northland Farms would have caused the alleged natural resource damages apart from the alleged operations of the Third Party Plaintiffs.

11. Third Party Plaintiffs have failed to allege that they have performed any duty that was the duty of Northland Farms to perform, and thus are not entitled to equitable relief pursuant to an unjust enrichment claim.

12. This Court lacks subject matter jurisdiction, and venue does not lie in the Northern District of Oklahoma, as most of the Illinois Watershed is in the Eastern District of Oklahoma.

13. Third Party Plaintiffs' claims are barred, in whole or in part, due to failure to exhaust administrative remedies.

14. Third Party Plaintiffs' claims are barred, in whole or in part, due to Third Party Plaintiffs' failure to identify any specific act, omission or release on the part of Northland Farms for which Plaintiffs seek to hold Northland Farms liable.

15. Third Party Plaintiffs' claims are barred, in whole or in part, by the applicable statutes of limitation, statutes of repose and the equitable doctrine of laches.

16. Plaintiffs' claims are barred under the doctrines of estoppel, waiver and consent.

17. Third Party Plaintiffs' claims are barred until such time as Total Maximum Daily Loads have been established for each constituent alleged, and for each water body alleged, as required by the federal Clean Water Act.

18. The Third Party Complaint fails to state any facts to support any claim that any act or omission of Northland Farms directly and proximately resulted in any injury for which Plaintiffs can recover.

19. While continuing to deny the material allegations of the Complaint, Northland Farms states that Third Party Plaintiffs' claims are barred, in whole or in part, by their own conduct that contributed to the injuries they claim.

20. Northland Farms states that Third Party Plaintiffs' claims are barred, in whole or in part, by their unclean hands and the doctrine of *in pari delicto*.

21. Third Party Plaintiffs' injuries, if any, are the result of intervening and/or superseding causes.

22. Northland Farms states that Third Party Plaintiffs' claims are barred, in whole or in part, by their failure to mitigate their alleged damages.

23. The damages of which Third Party Plaintiffs complain, if any, are the result of acts or omissions of individuals or entities over which Northland Farms has or had no control and for which Northland Farms has no responsibility.

24. Third Party Plaintiffs' claims should be dismissed by virtue of Third Party Plaintiffs' conduct, which results and resulted in the release of most, if not all, of the constituents alleged against Northland Farms.

25. Third Party Plaintiffs cannot state a claim against Northland Farms as Northland Farms does not have any discharge to the IRW.

26. Third Party Plaintiffs do not have a right of contribution for intentional torts.

27. Third Party Plaintiffs' claim for indemnity will not lie, as there is no express or implied contractual relationship or any other legal relationship with Northland Farms which gives rise to an indemnity claim.

28. Third Party Plaintiffs' Complaint should be dismissed, in whole or in part, due to Third Party Plaintiffs' attempt to recover multiple remedies for the same alleged injury.

29. Third Party Plaintiffs' claim for attorney's fees should be dismissed, as damages awarded for natural resource injuries cannot be utilized for the payment of attorney's fees.

30. Third Party Plaintiffs' claim for pre-judgment interest should be dismissed for failure to state a claim upon which relief can be granted, because the amount of damages, if any, was not readily ascertainable at the time Third Party Plaintiffs' lawsuit was commenced.

31. Northland Farms asserts that any award of punitive damages against Northland Farms would be unconstitutional as violative of the Double Jeopardy Clause of the Fifth Amendment, U.S. Const. Amend. V, the Excessive Fines Clause of the Eighth Amendment, U.S.

Const. Amend. VIII, the Due Process Clause of the Fourteenth Amendment, U.S. Const. Amend. XIV, and the Constitutions of the States of Oklahoma and Arkansas.

32. Third Party Plaintiffs do not have a right of contribution for actions not arising in tort.

33. Third Party Plaintiffs' claims are barred, in whole or in part, by 42 U.S.C.A. § 6972(b)(2)(C).

34. Third Party Plaintiffs do not have a right of contribution or indemnity under the Solid Waste Disposal Act or the Resource Conservation and Recovery Act.

35. The Third Party Complaint should be dismissed, in whole or in part, because Northland Farms is not an "Animal feeding operation" within the meaning proscribed by 2 O.S. § 20-3(B)(2).

36. The Third Party Complaint should be dismissed, in whole or in part, because the Oklahoma Concentrated Animal Feeding Operations Act does not give rise to a private cause of action.

37. Any release from Northland Farms is a permitted release under state and federal law.

38. Northland Farms hereby adopts and incorporates by reference any other statement of defense asserted by any other Defendant in this action.

Northland Farms reserves the right to Amend its Answer as discovery progresses to assert additional defenses, cross-claims, counterclaims and third-party claims.

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of May, 2006, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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